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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 16

Application Number: 09/896,894
Filing Date: June 29, 2001
Appellant(s): FOLIO, RICHARD J.

Mark Malek
For Appellant

EXAMINER'S ANSWER

Art Unit: 2644

This is in response to the appeal brief filed 6/2/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-64 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,055,939	Karamon et al.	10-1991
5,822,440	Oltman et al.	10-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. **Claims 1-13, 15-27, 29-43, 51-61 and 63-64** are rejected under 35 U.S.C. 103(a) as being unpatentable over Karamon et al. (US Patent No. 5,055,939) in view of Oltman et al. (US Patent No. 5,822,440). This rejection is set forth in prior Office Action, Paper No. 9.

Regarding **claim 1**, Karamon et al. (hereinafter, "Karamon"), as discussed in the applicant's admitted prior art (page 2, lines 22-35), discloses auxiliary audio being synchronized with the conventional audio portion of the cinema. However Karamon discloses that this is available to segments of the cinema audience sitting in preselected seating areas. Wireless transmission of audio through the use of wireless transmitters and receivers as well as wireless headphones are all well known in the art. As taught by Oltman et al. (hereinafter, "Oltman"), persons attending concerts, shows, or speaking engagements in large halls or arenas (indoor as well as outdoor) which would include a movie cinema, are interested in have sound high sound quality delivered to their specific location (col. 1-lines 39-43). Oltman further discloses a wireless headphone system comprises of a transmitter and receiver, which utilizes an unlicensed frequency band, wherein, the transmitter broadcasts a Direct Sequence Spread Spectrum in order to avoid interference with other channels (col. 3-lines 33-39). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a wireless headphone system as disclosed by Oltman to modify Karamon, which uses the auxiliary audio to allow the audience member to be seated wherever they desire instead of in preselected locations.

Regarding **claim 2**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Karamon further discloses the auxiliary source contains multiple language channels or translation tracks, which includes an audio message carrying same information as in track of the motion picture (abstract). A language channel would therefore comprise of words and only words if so desired.

Regarding **claim 3**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Karamon further discloses the auxiliary may include one or more translation sound tracks for alternative language audio content (col. 1-lines 34-41).

Regarding **claim 4**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). The applicant's admitted prior art, page 3, lines 6-17, discloses supplemental audio content offered by TheatreVision wherein a track provides narration of what is being shown on screen.

Regarding **claim 5**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Oltman further discloses the modulation scheme used by the wireless transmitter and receiver as direct sequence spread spectrum (DSSS) and therefore inherently teaches a digital modulator which are well known in the art for minimizing interference with wireless transmissions (col. 3-lines 38-40).

Regarding **claim 6**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Oltman further discloses the modulation scheme used by the wireless transmitter and receiver as direct sequence spread spectrum (DSSS) (col. 3-lines 38-40).

Regarding **claim 7**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 6). Oltman further discloses the modulation scheme used by the wireless transmitter and receiver as direct sequence spread spectrum (DSSS) (col. 3-lines 38-40).

Regarding **claim 8**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 6). Karamon and Oltman fail to specifically disclose or fairly suggest frequency hopping however, the Examiner takes Official Notice as the direct sequence and frequency hopping are the most commonly used methods for the spread spectrum technology. It would have been well known to one of ordinary skill in the art at the time the invention was made to use frequency hopping for the purpose of hopping around within the band in order to avoid the jammer at some frequencies.

Regarding **claim 9**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Oltman further discloses a CDMA signal on several separate code channels wherein it is inherent that the channels would have been either user selectable or automatically selectable for the purposes of having an available channel for use (col. 3-lines 38-40).

Regarding **claim 10**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 9). It is inherent that the selectable channels are radio frequency channels.

Regarding **claim 11**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Oltman further discloses a wireless headphone system comprises a transmitter and a receiver, which utilizes an unlicensed frequency band (col. 3-lines 34-36) and which inherently teaches a radio frequency transmission.

Regarding **claim 12**, see Examiner's comments regarding claim 11.

Regarding **claim 13**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 11). It would have been obvious for one of ordinary skill in the

art to operate in a designated band range for either an area allocated for service or an unlicensed area, which would therefore be an area not monitored and available to all.

Regarding **claim 15**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Oltman further discloses an associated pair of headphones per each receiver (col. 5-lines 44-46).

Regarding **claim 16**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). It would have been entirely obvious to one of ordinary skill in the art to have any type of volume control for the earphones as different forms of volume control are well known in the art and would have been obvious to include in this system as each person requires a different level of comfort for an optimum listening experience.

Regarding **claim 17**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). It would have been obvious to have at least one open field earphone, for example, the open air foam earphones which are in demand for various electronic device, for example, walkmans and disc-mans, to name a few. It is greatly desired to hear the background environment as well as the audio provided through the earphone instead of the closed earphone device in which it is difficult to hear any sort of background audio. Listeners would prefer to take advantage of the very expensive surround sound provided in present movie cinemas in addition to their supplemental audio and do not wish to miss out on the theater ambience, of being part of the movie, a listener is exposed to within a cinema.

Regarding **claim 18**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Karamon further discloses a correlation system 17 which serves as the controller for the synchronization system 40 which includes signal processors, storage capability and a CPU to store the audio data and therefore synchronize the auxiliary audio with the original audio of the film (col. 12-lines 28-35).

Regarding **claims 19 and 32**, Karamon, as discussed in the applicant's admitted prior art (page 2, lines 22-35), discloses auxiliary audio being synchronized with the conventional audio portion of the cinema. However Karamon discloses that this is available to segments of the cinema audience sitting in preselected seating areas. Wireless transmission of audio through the use of wireless transmitters and receivers as well as wireless headphones are all well known in the art. As taught by Oltman et al. (hereinafter, "Oltman"), persons attending concerts, shows, or speaking engagements in large halls or arenas (indoor as well as outdoor) which would include a movie cinema, are interested in have sound high sound quality delivered to their specific location (col. 1-lines 39-43). Oltman further discloses a wireless headphone system comprises of a transmitter and receiver, which utilizes an unlicensed frequency band, wherein, the transmitter broadcasts a Direct Sequence Spread Spectrum in order to avoid interference with other channels (col. 3-lines 33-39). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the wireless headphone system discloses by Oltman in system disclosed by Karamon which uses the auxiliary audio to allow the audience member to be seated wherever

Art Unit: 2644

they desire instead of in preselected locations. Oltman further discloses the modulation scheme used by the wireless transmitter and receiver as direct sequence spread spectrum (DSSS) and therefore inherently teaches a digital modulator which are well known in the art for minimizing interference with wireless transmissions.

Regarding **claims 20 and 33**, Karamon in view of Oltman discloses everything claimed as applied above (see claims 19 and 32, respectively). Karamon further discloses the auxiliary source contains multiple language channels or translation tracks, which includes an audio message carrying same information as in track of the motion picture (abstract). A language channel would therefore comprise of words and only words if so desired.

Regarding **claims 21 and 34**, Karamon in view of Oltman discloses everything claimed as applied above (see claims 19 and 32, respectively). Karamon further discloses the auxiliary may include one or more translation sound tracks for alternative language audio content (col. 1-lines 34-41).

Regarding **claims 22 and 35**, Karamon in view of Oltman discloses everything claimed as applied above (see claims 19 and 32, respectively). The applicant's admitted prior art, page 3, lines 6-17, discloses supplemental audio content offered by TheatreVision wherein a track provides narration of what is being shown on screen.

Regarding **claims 23 and 36**, Karamon in view of Oltman discloses everything claimed as applied above (see claims 19 and 32, respectively). Oltman further discloses the modulation scheme used by the wireless transmitter and receiver as direct sequence spread spectrum (DSSS) (col. 3-lines 38-40).

Regarding **claims 24 and 37**, Karamon in view of Oltman discloses everything claimed as applied above (see claims 19 and 32, respectively). Karamon and Oltman fail to specifically disclose or fairly suggest frequency hopping however, the Examiner takes Official Notice as the direct sequence and frequency hopping are the most commonly used methods for the spread spectrum technology. It would have been well known to one of ordinary skill in the art at the time the invention was made to use frequency hopping for the purpose of hopping around within the band in order to avoid the jammer at some frequencies.

Regarding **claim 25**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 19). Oltman further discloses a CDMA signal on several separate code channels wherein it is inherent that the channels would have been either user selectable or automatically selectable for the purposes of having an available channel for use.

Regarding **claim 26**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 25). It is inherent that the selectable channels are radio frequency channels.

Regarding **claims 27 and 38**, Karamon in view of Oltman discloses everything claimed as applied above (see claims 19 and 32, respectively). Oltman further discloses a wireless headphone system comprises a transmitter and a receiver, which utilizes an unlicensed frequency band (col. 3-lines 34-36) and which inherently teaches a radio frequency transmission.

Regarding **claims 29 and 41**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 19 and 32, respectively). It would have been entirely obvious to one of ordinary skill in the art to have any type of volume control for the earphones as different forms of volume control are well known in the art and would have been obvious to include in this system as each person requires a different level of comfort for an optimum listening experience.

Regarding **claims 30 and 42**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 19 and 32, respectively). It would have been obvious to have at least one open field earphone, for example, the open air foam earphones which are in demand for various electronic device, for example, walkmans and disc-mans, to name a few. It is greatly desired to hear the background environment as well as the audio provided through the earphone instead of the closed earphone device in which it is difficult to hear any sort of background audio. Listeners would prefer to take advantage of the very expensive surround sound provided in present movie cinemas in addition to their supplemental audio and do not wish to miss out on the theater ambience, of being part of the movie a listener is exposed to within a cinema.

Regarding **claims 31 and 43**, Karamon in view of Oltman discloses everything claimed as applied above (see claims 19 and 32, respectively). Karamon further discloses a correlation system 17 which serves as the controller for the synchronization system 40 which includes signal processors, storage capability and a CPU to store the

audio data and therefore synchronize the auxiliary audio with the original audio of the film (col. 12-lines 28-35).

Regarding **claim 39**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 38). Oltman further discloses the transmitter and receiver operates in an unlicensed frequency band (col.3-lines 35-36).

Regarding **claim 40**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 38). It would have been obvious for one of ordinary skill in the art to operate in a designated band range for either an area allocated for service or an unlicensed area, which would therefore be an area not monitored and available to all.

Regarding **claim 51**, it is interpreted and thus rejected for the same reasons as set forth above in claim 1. Since claim 51 discloses a method, which corresponds to, the apparatus of claim 1; the method is obvious in that it simply provides functionality for the structure of claim 1.

Regarding **claim 52**, it is interpreted and thus rejected for the same reasons as set forth above in claim 2. Since claim 52 discloses a method, which corresponds to, the apparatus of claim 2; the method is obvious in that it simply provides functionality for the structure of claim 2.

Regarding **claim 53**, it is interpreted and thus rejected for the same reasons as set forth above in claim 3. Since claim 53 discloses a method, which corresponds to, the apparatus of claim 3; the method is obvious in that it simply provides functionality for the structure of claim 3.

Regarding **claim 54**, it is interpreted and thus rejected for the same reasons as set forth above in claim 4. Since claim 54 discloses a method, which corresponds to, the apparatus of claim 4; the method is obvious in that it simply provides functionality for the structure of claim 4.

Regarding **claim 55**, it is interpreted and thus rejected for the same reasons as set forth above in claim 5. Since claim 55 discloses a method, which corresponds to, the apparatus of claim 5; the method is obvious in that it simply provides functionality for the structure of claim 5.

Regarding **claim 56**, it is interpreted and thus rejected for the same reasons as set forth above in claim 6. Since claim 56 discloses a method, which corresponds to, the apparatus of claim 6; the method is obvious in that it simply provides functionality for the structure of claim 6.

Regarding **claim 57**, it is interpreted and thus rejected for the same reasons as set forth above in claim 7. Since claim 57 discloses a method, which corresponds to, the apparatus of claim 7; the method is obvious in that it simply provides functionality for the structure of claim 7.

Regarding **claim 58**, it is interpreted and thus rejected for the same reasons as set forth above in claim 8. Since claim 58 discloses a method, which corresponds to, the apparatus of claim 8; the method is obvious in that it simply provides functionality for the structure of claim 8.

Regarding **claim 59**, it is interpreted and thus rejected for the same reasons as set forth above in claim 9. Since claim 59 discloses a method, which corresponds to,

the apparatus of claim 9; the method is obvious in that it simply provides functionality for the structure of claim 9.

Regarding **claim 60**, it is interpreted and thus rejected for the same reasons as set forth above in claim 10. Since claim 60 discloses a method, which corresponds to, the apparatus of claim 10; the method is obvious in that it simply provides functionality for the structure of claim 10.

Regarding **claim 61**, it is interpreted and thus rejected for the same reasons as set forth above in claim 11. Since claim 61 discloses a method, which corresponds to, the apparatus of claim 11; the method is obvious in that it simply provides functionality for the structure of claim 11.

Regarding **claim 63**, it is interpreted and thus rejected for the same reasons as set forth above in claim 16. Since claim 63 discloses a method, which corresponds to, the apparatus of claim 16; the method is obvious in that it simply provides functionality for the structure of claim 16.

Regarding **claim 64**, it is interpreted and thus rejected for the same reasons as set forth above in claim 17. Since claim 64 discloses a method, which corresponds to, the apparatus of claim 17; the method is obvious in that it simply provides functionality for the structure of claim 17.

2. **Claims 14, 28, 44-50 and 62** are rejected under 35 U.S.C. 103(a) as being unpatentable over Karamon et al. (US Patent No. 5,055,939) in view of Oltman et

al. (US Patent No. 5,822,440) and in further view of Denenberg (US Patent No. 5,375,174).

Regarding **claim 14**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 1). Oltman fails to specifically disclose or fairly suggest infrared transmission. However, infrared transmission is well known in the art as another form of wireless transmission. Denenberg discloses a wireless headset, capable of either radio frequency or infrared transmission, which is feasible wherein the modulation scheme is digital spread spectrum. Therefore it would have been obvious for one of ordinary skill in the art to use infrared communication for line of sight because it provides a higher bandwidth (col. 1-lines 46-47).

Regarding **claim 28**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 19). Oltman fails to specifically disclose or fairly suggest infrared transmission. However, infrared transmission is well known in the art as another form of wireless transmission. Denenberg discloses a wireless headset, capable of either radio frequency or infrared transmission, which is feasible wherein the modulation scheme is digital spread spectrum. Therefore it would have been obvious for one of ordinary skill in the art to use infrared communication for line of sight because it provides a higher bandwidth.

Regarding **claim 44**, Karamon, as discussed in the applicant's admitted prior art (page 2, lines 22-35), discloses auxiliary audio being synchronized with the conventional audio portion of the cinema. However Karamon discloses that this is available to segments of the cinema audience sitting in preselected seating areas.

Wireless transmission of audio through the use of wireless transmitters and receivers as well as wireless headphones are all well known in the art. As taught by Oltman et al. (hereinafter, "Oltman"), persons attending concerts, shows, or speaking engagements in large halls or arenas (indoor as well as outdoor) which would include a movie cinema, are interested in have sound high sound quality delivered to their specific location (col. 1-lines 39-43). Oltman further discloses a wireless headphone system comprises of a transmitter and receiver, which utilizes an unlicensed frequency band, wherein, the transmitter broadcasts a Direct Sequence Spread Spectrum in order to avoid interference with other channels (col. 3-lines 33-39). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the wireless headphone system discloses by Oltman in system disclosed by Karamon which uses the auxiliary audio to allow the audience member to be seated wherever they desire instead of in preselected locations. Oltman fails to specifically disclose or fairly suggest infrared transmission. However, infrared transmission is well known in the art as another form of wireless transmission. Denenberg discloses a wireless headset, capable of either radio frequency or infrared transmission, which is feasible wherein the modulation scheme is digital spread spectrum (col. 1-lines 46-47). Therefore it would have been obvious for one of ordinary skill in the art to use infrared communication for line of sight because it provides a higher bandwidth.

Regarding **claim 45**, Karamon and Oltman in view of Denenberg discloses everything claimed as applied above (see claim 44). Karamon further discloses the auxiliary source contains multiple language channels or translation tracks, which

includes an audio message carrying same information as in track of the motion picture (abstract). A language channel would therefore comprise of words and only words if so desired.

Regarding **claim 46**, Karamon and Oltman in view of Denenberg discloses everything claimed as applied above (see claim 44). Karamon further discloses the auxiliary may include one or more translation sound tracks for alternative language audio content (col. 1-lines 34-41).

Regarding **claim 47**, Karamon and Oltman in view of Denenberg discloses everything claimed as applied above (see claim 44). The applicant's admitted prior art, page 3, lines 6-17), discloses supplemental audio content offered by TheatreVision wherein a track provides narration of what is being shown on screen.

Regarding **claim 48**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 44). It would have been entirely obvious to one of ordinary skill in the art to have any type of volume control for the earphones as different forms of volume control are well known in the art and would have been obvious to include in this system as each person requires a different level of comfort for an optimum listening experience.

Regarding **claim 49**, Karamon in view of Oltman discloses everything claimed as applied above (see claim 44). It would have been obvious to have at least one open field earphone, for example, the open air foam earphones which are in demand for various electronic device, for example, walkmans and disc-mans, to name a few. It is greatly desired to hear the background environment as well as the audio provided

through the earphone instead of the closed earphone device in which it is difficult to hear any sort of background audio. Listeners would prefer to take advantage of the very expensive surround sound provided in present movie cinemas in addition to their supplemental audio and do not wish to miss out on the sensation of being part of the movie a listener is exposed to within a cinema.

Regarding **claim 50**, Karamon and Oltman in view of Denenberg discloses everything claimed as applied above (see claim 44). Karamon further discloses a correlation system 17 which serves as the controller for the synchronization system 40 which includes signal processors, storage capability and a CPU to store the audio data and therefore synchronize the auxiliary audio with the original audio of the film (col. 12- lines 28-35).

Regarding **claim 62**, it is interpreted and thus rejected for the same reasons as set forth above in claim 14. Since claim 62 discloses a method, which corresponds to, the apparatus of claim 14; the method is obvious in that it simply provides functionality for the structure of claim 14.

(11) Response to Argument

In the Appellant's Appeal Brief, page 7, lines 17-29 and Page 9, lines 1-14, Appellant argues, "that the combination of the Karamon et al. patent and the Oltman et al. patent still fails to teach or suggest a wireless transmitter connected to at supplemental audio content player, and a wireless receiver connected to an earphone worn by the movie patron that has operating characteristics to avoid interference with

respective supplemental audio content systems for other cinemas of a cineplex.” The argument is that the combination of the references fails to teach the claimed invention. Examiner disagrees. The primary reference Karamon et al., which was provided as prior art by the Appellant, discloses auxiliary audio being synchronized with the conventional audio portion of the cinema which is available to segments of the cinema audience sitting in preselected seating areas. This includes a transmitter, supplemental audio player, receiver and earphone but connected via wires. Karamon et al. discloses everything claimed except for wireless transmission. Wireless headphones are well known in the art. The Secondary reference, Oltman et al., was only applied to show that the system can be wireless, that reproducing audio through transmitting and receiving wirelessly is well known in the art and more specifically in the same environment.

Page 10, lines 1-5, Appellants argues “that there is no proper motivation in the prior art for the selective combination of the references”. The Examiner disagrees with the Appellant because as described above, there is proper motivation for combining secondary reference. Oltman et al. was applied with Karamon et al. to show that wireless is well known and provides a teaching in the environment for what the primary reference, Karamon et al. lacks.

Page 10, lines 6-26, the Appellant argues “one skilled in the art would recognize that combining Karamon et al. and Oltman et al. would destroy the operability of Karamon et al. In other words, intentionally delaying the synchronization of the sound, as disclosed in Oltman et al., would destroy the operability of synchronization system for

“perfectly synchronizing” a movie sound track with motion picture images”. The Examiner understands the Appellant’s arguments, but disagrees. The secondary reference, Oltman et al., has been applied to merely teach the wireless application to a system in the same environment is well known in the art and would have been obvious to one of ordinary skill in the art to use a wireless application to avoid the limiting factors of the wires making it less restricting to movement and more convenient. The appellant has misunderstood the application of the secondary reference. The specifics of the Oltman et al. reference are not important nor are any components taken from the Oltman et al. and substituted into the Karamon et al. reference. The Oltman et al. reference is applied solely as a well-known teaching that systems in the theater environment can be wireless. The argument that the secondary reference destroys the first reference is not persuasive. Karamon et al. discloses everything claimed however shows the use of wires. Where wires are limiting and cumbersome it is well known to use wireless systems as disclosed by Oltman et al.

Page 10, lines 27-29 and Page 11, lines 1-15, Appellant argues “there is no proper motivation to combine the references” and “the examiner appears to be using improper hindsight reconstruction based upon Applicant’s specification to selectively combine disjoint bits and pieces of the prior art in an attempt to produce the claimed invention”. However the Examiner disagrees. Wireless headphones are well known in the art and it would have been obvious for one of ordinary skill to use a wireless system, as is commonly used for convenience and to decrease limitations on a user in an already disclosed supplemental audio system in a theater, as disclosed by Karamon et

al. The only factor lacking in the Karamon et al. reference is the wireless teaching. However this teaching is well known in that art and the teaching alone is shown in the Oltman et al. reference. Therefore, hindsight is not used as the teaching is well known and commonly used. Applying a wireless system for the purpose of convenience to the user in a theater that already exists, and shown by Karamon et al., to supply supplemental audio to the user, would have been obvious.

Page 13, lines 1-9, the Appellant argues "the Denenberg patent still fails to make up for the deficiencies of the Oltman et al. and the Karamon et al. patents. In other words, there are simply no teachings in these references regarding wireless, or infrared, transmission for providing supplemental audio content to at least one movie patron during playing of a motion picture film and associated soundtrack in a cinema of a cineplex comprising a plurality of individual cinemas, as in the claimed invention". The Examiner disagrees with the Appellant's argument. The primary reference Karamon et al. discloses everything claimed except for wireless transmission. Wireless headphones are well known in the art. The Secondary reference, Oltman et al., was applied only to show that the system can be wireless and is in fact well known in the art. However, as described above, Karamon et al. as modified to show wireless communication. Denenberg is applied merely to show infrared is a well-known form of wireless transmission.

Page 13, lines 10-17, Appellant argues that "the Oltman et al. patent actually teaches away from a combination with the Karamon et al. patent" and "any combination of these references along with the Denenberg infrared headphones would also be

improper". Appellant's argument is not persuasive because the primary reference Karamon et al. discloses everything claimed except for wireless transmission and the secondary reference, Oltman et al., was applied only to show that the system can be wireless and is in fact well known in the art. In addition, Denenberg was applied merely to show infrared is a well-known form of wireless transmission. Having a wireless system, which can use infrared transmission, as described above would have been obvious, Karamon et al. as modified with Denenberg.

(12) Conclusion

As admitted by the Applicant, supplemental audio is well known in the art and already exists in order to provide an individual with supplemental audio and is disclosed in the Karamon et al. reference. Karamon et al. discloses everything as claimed except the teaching of using a wireless system. Karamon et al. discloses using headphones that are placed in particular seats and locations within the theater, which limits the user to particular seating. Wireless headphones are well known in the art to allow an individual to move freely and not limit to one location due to the wires. With that in mind the limitation would have been the wires of the headphone that forces the individual to sit in specific seats. At the time of the invention it was well known in the art to use wireless headphones to avoid the limiting factor of the wires making it less restricting to movement and more convenient. The Oltman et al. reference was used merely as an example to show wireless headphones were well known in public areas such as

Art Unit: 2644

theaters at the time of the invention. In addition, Denenberg reference was applied to show that infrared wireless transmission would have been obvious.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Elizabeth McCleskey

EAM

August 11, 2003

Conferees

MinSun Harvey
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